IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

MFA.No. 1021 of 2000(A)

EIC.48/1995 of EMPLOYEES INSURANCE COURT, KOZHIKODE
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APPELLANT: APPLICANT

M/S.KALPAKA TOURIST HOME,
REP.BY ITS MANAGING PARTNER,
N.A.UNNEERIKUTTY, TOWN HALL ROAD,
KOZHIKODE 1.

2ND APPELLANT IMPLEADED

2. M.A. PANCHALI, PANCHAJANYAM,
NR.IMA HALL, OLD ZILLA BUNGALOW ROAD,
KOZHIKODE

2ND APPELLANT IMPLEADED AS PER ORDER DT.12.11.2007 ON IA.2725/2007

BY ADV. SRI.A.SUDHI VASUDEVAN

RESPONDENT/RESPONDENT

THE REGIONAL DIRECTOR,
EMPLOYEES STATE INSURANCE CORPORATION,
THRISSUR.

BY ADV. SRI.T.V.AJAYAKUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/11/2007, ALONG WITH MFA NO. 1023 OF 2000 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.1021/2000

ORDER ON CMP. NO.5762/2000 IN MFA. NO.1021/2000

DISMISSED

12.11.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B.KOSHY & K.HEMA, JJ.

M.F.A.Nos.1021 & 1023 OF 2000

Dated 12th November, 2007

JUDGMENT

Koshy,J.

Appellant was issued with a demand for paying contribution in respect of the tourist home treating it as a covered establishment. Appellant questioned the same stating that he never employed 10 or more persons in the establishment. He approached the Employees' Insurance Court. The Employees' Insurance Court found that in `Kalpaka Tourist Home' a restaurant is being conducted by name `Kalpatharu Restaurant'. Contention was that the restaurant was being conducted by the wife of the managing partner of the partnership which is running Kalpaka Tourist Home. The Tribunal on evidence found that there is unity of ownership, management and control, functional integrity, unity of purpose etc., both are family units and both can be clubbed together. It is contented that proprietress of the restaurant was not given opportunity to question the matter when the demand was made treating both units as parts of one establishment. It is for the appellant to produce evidence to show that they are not parts of same establishment, but, they are separate. Appellant could have summoned the proprietress of the restaurant and also produced documents to show that these are independent establishments. Even if restaurant is running

separately, we are of the view that in view of the decision of the Supreme Court in **Royal Talkies, Hyderabad** v. **E.S.I. Corporation** (AIR 1978 SC 1478) a different view can be arrived at as the work in the restaurant was also connected with the works of the Tourist Home where guests are staying. The E.I. Court also found that in the partnership which conducts Kalpaka Tourist Home managing partner's wife is also a partner. That is also not disputed. In the above circumstances, it cannot be stated that these are two different establishments and entirely different in the parameters as laid down by the Supreme Court in **Associated Cement Cos.** v. **Their Workmen** (AIR 1960 SC 56) . The E.I. Court has considered the evidence and found that the restaurant is also working in part of the establishment M/s. Kalpaka Tourist Home and both are integrally connected and, therefore, total employees can be counted for coverage. We see no ground to differ from the finding of facts entered by the E.I. Court. E.I. Court has given opportunity to the appellant to prove with documents regarding the amount of wages paid and actual contribution payable instead of adhoc assessment.

Both appeals are dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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